

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Applicant:
James P. von Wolske

Filed: September 16, 2003

Serial No.: 10/663,899

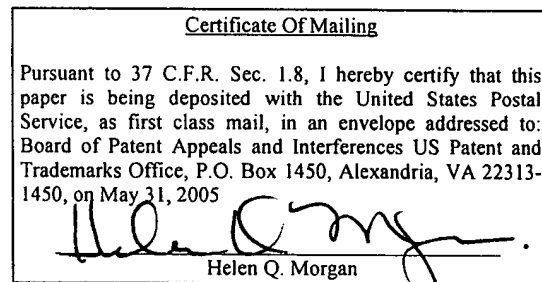
For: DOCKING LIGHT SYSTEM
INCLUDING AN ACCESSORY
LAMP

§
§
§
§
§
§
§
§
§
§

Atty Dkt No.: VONW.0001D

Group Art Unit: 2875

Examiner: Hargobind S. Sawhney



APPEAL BRIEF TRANSMITTAL LETTER

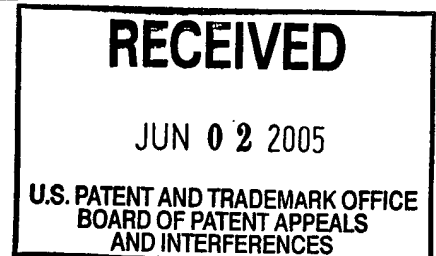
Board of Patent Appeals and Interferences
Alexandria, VA 22313-1450

Dear Sir:

Enclosed please find:

1. Original and two copies of Appellants Appeal Brief;
2. Small Entity Fee in the amount of \$250.00 as per 37 CFR § 1.17(c); and
3. A self-addressed postcard. Please date stamp and return this postcard evidencing receipt of these materials.

The Appellants Appeal Brief is being timely filed within the time period specified under §1.191, which is on or before May 31, 2005. It is respectfully requested that this brief be entered in the above-referenced Board of Patent Appeals and Interferences appeal matter. If there are any questions regarding this matter, the Examining Attorney is encouraged to contact the below-listed attorney for applicant at (512) 295-8050. The attorney may also be reached through e-mail at gstanford@alumni.utexas.net.



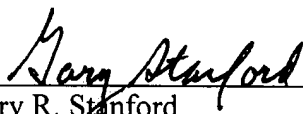
The Commissioner is hereby authorized to charge any deficiency in the payment of the required fee(s) or credit any overpayment to Deposit Account No. 50-1469 in the name of Gary R. Stanford.

A copy of this letter is enclosed for your convenience.

Respectfully submitted,

Date: May 31, 2005

By:



Gary R. Stanford
Reg. No. 35,689

Law Offices of Gary R Stanford
330 W. Overlook Mountain Rd.
Buda, Texas 78610
Phone: (512) 295-8050
Fax: (512) 233-2633

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Applicant:
James P. von Wolske

Filed: September 16, 2003

Serial No.: 10/663,899

For: "A DOCKING LIGHT SYSTEM
INCLUDING AN ACCESSORY
LAMP"

§
§
§
§
§
§
§
§
§

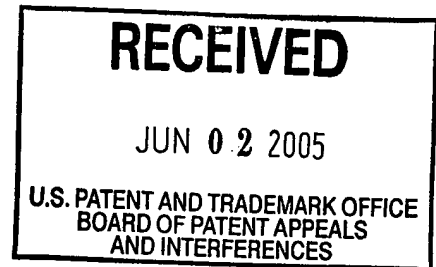
Atty. Dkt No.: VONW:0001D

Group Art Unit: 2875

Examiner: SAWHNEY, HARGOBIND S

APPELLANT'S APPEAL BRIEF

Board of Patent Appeals and Interferences
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450



Dear Sir:

This brief is in furtherance of the Notice of Appeal, filed in this case mailed March 30, 2005 and received by the Patent Office on April 1, 2005.

The Applicant respectfully requests the Board of Patent Appeals and Interferences to reverse the final rejection of Claims 11-15 under 35 U.S.C. §102(e) and the final rejection of claims 16, 17 and 20 under 35 U.S.C. §103(a). The present invention as recited in claims 11-15 is not anticipated and the present invention as recited in claim 20 is not obvious in view of the prior art relied upon by the Examiner.

THE REAL PARTY IN INTEREST

The real party in interest is named in the caption of this brief, James P. von Wolske.

RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

The Applicant's legal representative is Gary R. Stanford. The firm address and telephone number are as follows:

Gary R. Stanford
Law Offices of Gary R Stanford
Customer Number 26122

06/07/2005 15:00:00
250.00
06/07/2005 15:00:00
250.00

330 W Overlook Mountain Rd
Buda, Texas 78610
512-295-8050 – work
512-233-2633 – fax

STATUS OF CLAIMS

Claims 1-20 are currently pending.

Claims 1-10 and 19 are allowed and thus are not involved in this Appeal.

Claims 11 and 12 stand rejected under 35 U.S.C. §102(e) as being anticipated by US Pat. No. 6,672,240 to Aubé et al. (hereinafter “Aubé”) and are involved in this appeal.

Claims 13-15 stand rejected under 35 U.S.C. §102(e) as being anticipated by US Pat. No. 5,339,225 to Wiggeman (hereinafter “Wiggeman”) and are involved in this appeal.

Claims 16 and 17 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Wiggeman. In the Final Office Action dated November 30, 2004, the drawings were objected to as not showing features in claim 16 and 17 and the specification was objected to as failing to provide antecedent basis for subject matter of claims 16 and 17. Applicant submitted an Amendment and Request for Reconsideration on January 28, 2005, in which Applicant attempted to cancel claims 16 and 17. This Amendment after Final, however, was not entered as indicated in the Advisory Action mailed February 16, 2005. ***Applicant hereby withdraws claims 16 and 17 from consideration and thus are not involved in this Appeal.***

Claim 18 was objected to as being dependent upon a rejected base claim, namely claim 13, but would otherwise be considered allowable if re-written in independent form. Claim 18, therefore, is not involved in this appeal.

Claim 20 also stands rejected under 35 U.S.C. §103(a) as being unpatentable over Wiggeman and is involved in this appeal.

STATUS OF AMENDMENTS

None of the claims were amended after Final Rejection. As noted above, Applicant filed an Amendment and Request for Reconsideration in reply to the Final Rejection, however, the Examiner refused to enter the amendment.

SUMMARY OF INVENTION

Briefly stated, the present invention, as described in the claim 11, is docking light system for a watercraft including first and second docking light fixtures, where each docking light fixture is modified according to the present invention to include an accessory light, where the first and second accessory lights collectively are a masthead light. In claim 12, the fixtures are mounted at the bow of the watercraft.

As described in claim 13, the invention is a docking light system for a watercraft including a docking light fixture and a navigation light provided on the docking light fixture. The navigation light may comprise a masthead light (claim 14) or a stern light (claim 15).

As described in claim 20, the invention is a watercraft with a hull and fittings, a docking light fixture mounted to a selective one of the hull and fittings, where the docking light fixture includes both a docking lamp positioned within and a navigation light provided thereon.

In at least one aspect of the present invention, the docking light system is improved by positioning an accessory lamp or navigation lamp on the docking light fixture to reduce glare as perceived by an operator of the watercraft and to increase conspicuity (visibility) to other watercraft for improved safety.

ISSUE FOR REVIEW

Whether claims 11 and 12 are patentable under 35 U.S.C. §102(e) over Aubé.

Whether claims 13-15 are patentable under 35 U.S.C. §102(e) over Wiggerman.

Whether claim 20 is patentable under 35 U.S.C. §103(a) over Wiggerman.

GROUPING OF THE CLAIMS

Claims 11 and 12 stand or fall together.

Claims 13 – 15 stand or fall together.

ARGUMENT

The application as filed is directed towards lighting to achieve safe operation for night time boating, which requires that the watercraft operator be able to see (proper lookout) and that the watercraft be seen by others (conspicuity) while underway on the water. As described in the

application as filed beginning on page 1, line 19, these two requirements are desired functions that are at odds with each other. This is because the best way to see others is to operate without lights (which eliminates glare, but also minimizes conspicuity) and the best way to be seen by others is to brightly illuminate the watercraft with numerous lights (which causes excessive glare that minimizes the ability to see others). The application as filed teaches that the current Navigation Rules (or the "Rules"), which were promulgated by the U.S. Coast Guard in an attempt to address night time boating conditions, are antiquated (beginning page 4, line 11). Conventional lighting systems, even if designed to meet the letter of the Navigation Rules, often do not meet the spirit or intent of the Rules since they do not maximize both functions of conspicuity and proper lookout. The present invention is directed towards meeting the intent and spirit of the Navigation Rules by better addressing the intent of those rules, while not necessarily conforming to the exact letter of those Rules.

There are numerous types of lights and each has a purpose. As known and understood by those skilled in the art, docking lights are designed for purposes of docking the boat and are prohibited from use while navigating because they tend to blind the driver of an oncoming boat while underway on the water. Docking lights are usually large and relatively bright as described beginning on page 37, line 21 and as shown in FIG 33. Other lights, such as "navigation lights" and "accessory lights", are common on boats while operating at night. The U.S. Coast Guard defines particular types of lights as navigation lights in an attempt to ensure a minimum standard of safety performance during navigation at night. The application as filed describes an accessory light which better performs the intended functions of navigation lights without necessarily meeting the strict letter of the Navigation Rules. In particular, the first paragraph on page 16, lines 2-20 of the application as filed illuminates the term "accessory" as used therein:

It is noted that the term "navigation light" generally refers to certain lights used for navigation purposes, such as a "masthead light" or a "stern light" among other types of navigation lights. It is noted, however, that the terms "masthead" and "stern" are typically used to refer to specific navigation lights that conform to all of the strict requirements specified in the Navigation Rules. The masthead lights and stern lights described herein, however, do not necessarily conform to the strict requirements of the Navigation Rules although they may be used to perform masthead or stern light functions. Thus, these lights may be considered "accessory lights" that may perform masthead or stern light functions as defined in the current Navigation Rules. It is contemplated that the accessory lights described herein are improvements of the existing navigation lights and may in

fact conform to masthead or stern lights of new Navigation Rules if the Rules are modified to take advantage of the improvements described herein.

Applicant respectfully submits that claims 11 and 12 are patentable under 35 U.S.C. §102(e) over Aubé.

Contrary to that stated in the Final Office Action, the lights 11 in the pair of fixtures 158 of Aubé do not collectively comprise a masthead light as recited in claim 11. As described further below, the masthead light serves the conspicuity function to enable others to see a boat from straight ahead and from either side at night, particularly during navigation. As described in Aubé (col. 6, lines 11-24), each fixture 158 includes a *courtesy* light 11 and a docking light 12 “for illuminating the deck and other forward areas of the deck boat (1).” As shown by the port side perspective view of FIG. 9 of Aubé, the fixtures 158 are mounted in a recess area and masked from the sides by gunwales 17 and 18 on either side of the boat. Aubé’s FIGs 2 and 4 collectively show more clearly that the fixtures 158 are positioned between the gunwales 17 and 18 and below the upper extent of the gunwales 17 and 18 and thus *cannot* be seen from either side. This is further evidenced by Aubé’s FIG. 1 showing a side view of the boat (at a 90 degree perspective relative to dead-ahead), in which the gunwale 17 completely masks both fixtures 158 when viewed from either side.

The first and second courtesy lights 11 in fixtures 158 of Aubé not only can not function as a masthead light, but otherwise violate the proper lookout function *if used during navigation*. As noted in the application as filed on page 2, beginning line 10, at least one problem is glare, or unwanted light. The function of Aubé’s courtesy light 11, which illuminates the deck and other forward areas of the boat deck, potentially generates at least four of the five types of glare, including secondary glare, reflected glare, water glare, and bloom. These lights are not for purposes of navigation, but are instead for purposes of illuminating the front portion of the boat as a courtesy to passengers to enable them to see the forward deck surface while they are stepping aboard the boat.

Claim 11 recites that the first and second accessory lamps collectively are a masthead light. In the application as filed, on page 5 beginning on line 17, it is stated that “[f]orward looking white navigation lights with a 225 degree horizontal spread are referred to as masthead lights” by the Rules. According to the Navigation Rules, the masthead light must shine from dead ahead to at least 112.5 degrees towards the rear on either side of the boat. The requirement

in the Rules that the masthead light have a 225 degree horizontal spread is also stated on page 40, beginning on line 4, in which it is stated that “a horizontal beam spread of 112.5 degrees’ is used “to satisfy the half angle requirements of the masthead lights” In FIGs 1, 3, and 4 of the application as filed, the pair of white lights 50 mounted at the bow of the boat meet the beam spread requirements of a masthead light. An exemplary docking light fixture with a docking light D is shown in FIG. 33 and described beginning on page 37, line 21 of the application as filed in which a lamp 60 is added to the docking fixture to serve as a navigation light. The lamp 60 is positioned within the fixture to establish horizontal beam sectors 170 with an included angle of 112.5 degrees.

In the Advisory Action, the Examiner stated that claim 11 does not include the limitation “forward looking white navigation lights with 225 degree horizontal spread” and further stated that “the specification does not define the masthead light in definite terms.” The above-quoted language from the application as filed, however, is sufficiently clear and definite regarding the horizontal beam spread requirement of masthead lights as specified in the Rules. But the Rules include several other requirements for masthead lights, such as vertical sector requirements, color temperature requirements (shade and coloration of white light), light intensity requirements (to achieve visibility of 2 nautical miles), and light placement requirements (placing the light at a particular elevation above the water). The Application as filed, beginning on page 4, line 9 to page 8, line 14, discusses the requirements of the Rules and conventional solutions.

Applicant objects to a requirement to include the specific language from the Rules. As noted above, the Rules were written in an attempt to ensure a minimum standard of safety performance during navigation at night. The *intent* of the Rules regarding masthead lights is to enable others to see the boat at a particular distance at night from the front and from either side during navigation. Yet the Rules do not actually ensure conspicuity or proper lookout; conventional lighting systems that otherwise may meet the letter of the Rule often fail to meet either the conspicuity function or the proper lookout function, and in some cases, fail to meet both. And the Rules could potentially change at any time. The particular embodiments described in the Application meet or otherwise exceed the Navigation Rules, at least as they are currently written. Applicant’s invention, however, is not intended to meet the strict letter of the Navigation Rules, but instead to provide an improved lighting system and method that

maximizes the conspicuity and proper lookout functions, and that is superior to conventional lighting systems.

And further, Aubé's courtesy lights 11 in fixtures 158 are not intended as navigation lights, much less masthead lights, and cannot function as such. There is no discussion of the intensity or color of these lights. The placement may or may not meet the elevation requirements. The courtesy lights 11 cannot be seen from either side of the boat. And if used during navigation, Aubé's courtesy lights 11, which are intended to illuminate the deck, would effectively blind the operator of the boat from objects and other boats straight ahead, violating the very essence of proper lookout.

It should be clarified at this point that each individual *accessory* light of claim 11, in and of itself, is not a *navigation* light as strictly specified in the Navigation Rules since neither, by itself, meets the requirements of masthead lights. Yet the first and second accessory lights *collectively* are a masthead light, so that both together operate as a masthead light. This provides a substantial improvement over prior art since it is often difficult to provide a single navigation light to perform the functions of a masthead or stern light without causing glare to the operator of the boat.

The Examiner further argues in the Advisory Action that the docking light system in Aubé meets the limitations of claims 11 and 12 since the applicant's specification states on page 5, lines 20-23, that "[o]n boats under 12 meters in length, it is permissible to combine the masthead light and the stern light into a single 360 degree "all around" light." While it is true that a single 360 degree all around light does meet the requirements of a masthead light, this does not somehow mean that the courtesy lights 11 of the fixtures 158 of Aubé meet the masthead light requirements. The lights in fixture 158 of Aubé do not collectively form a masthead light on any boat of any length.

Applicant respectfully submits, therefore, that claim 11 is allowable over Aubé. Claim 12 is allowable as depending upon allowable claim 11. Applicant requests withdrawal of these rejections.

Applicant respectfully submits that claims 13-15 are allowable under §102(e) over Wiggeman.

Claim 13 recites a *docking light* fixture including a docking lamp positioned within and a navigation light provided on the docking light fixture. Contrary to that stated in the Office

Action, Wiggerman's wand 10 is not a docking light fixture, but instead is "an improved illuminated wand structure *specifically intended* as a boat stern *running* light" (Abstract, emphases added). As understood by those of ordinary skill in the art, a running light is used at night when a boat is underway on the water or otherwise moored in the water (e.g., not docked but positioned away from the shore line, e.g., fifty feet from the shore as described in col. 1, line 38) rather than for purposes of docking the boat or while being docked. Wiggerman, col. 1, lines 34-49, specifically describes at least one problem of prior-art stern lights when the boat is moored in the water. In particular, another boat approaching the shore might otherwise easily mistake the stern light for a light emanating from the shore line. Docking lights, as known to those skilled in the art, are relatively bright, directional lights (e.g., spot lights) used to illuminate an external object, such as a dock or the shore line for purposes of docking the boat, and are specifically not used as running lights.

The upper light 40 of the wand 10 is not a docking lamp, but instead is "constructed in a manner typical with the prior art type stern running lights of the pole type variety" (Wiggerman, col. 5, lines 14-16). For smaller boats, this light is otherwise referred to as the "360 degree 'all around' light" (see application as filed, page 5, line 23) commonly known and understood by those skilled in the art. The first and second lights 30, 35 within the wand 10 are also not docking lights but are specifically used as part of the boat stern running light. As described on col. 2, lines 57-68 of Wiggerman, these internal wand lights provide additional illumination below the stern light 40 to reduce the possibility of mistaking the stern light as a light on the shore line, and this is while the boat is on the water (either underway or moored), and specifically not while the boat is docked or in the process of being docked. Thus, the lights 30, 35 are also considered running lights. Nothing about the wand 10 is intended for purposes of docking, and, in fact, the word "dock" and its various forms (e.g., docking, docked, etc) is not found in Wiggerman at all.

Applicant respectfully submits, therefore, that claim 13 is allowable over Wiggerman. Claims 14 and 15 are allowable as depending upon allowable claim 13. Applicant requests withdrawal of these rejections.

Applicant respectfully submits that claim 20 is patentable under 35 U.S.C. §103(a) over Wiggerman.

Claim 20 is similar to claim 13 except directed to the watercraft itself. Claim 20 is allowable over Wiggerman for similar reasons as recited above for claim 13, and is further not obvious in view of Wiggerman.

The United States Supreme Court, in Graham v. John Deere, set forth a three-part test for *prima facie* obviousness:

- (1) The scope and content of prior art to be determined;
- (2) Differences between the prior art and the claims at issue are to be ascertained; and
- (3) The level of ordinary skill in the pertinent art resolved.

Against this background, the obviousness or non-obviousness of the subject matter is determined.

(1) The Scope and Content of Prior Art

The Examiner has relied on Wiggerman as the sole reference for the §103 rejection. Wiggerman is directed to, and teaches and suggests, an improved illuminated wand structure specifically intended as a boat stern running light. There is no suggestion whatsoever that the wand 10 or any light thereon is used for purposes of docking the boat. Nothing about the wand 10 is intended for purposes of docking, and, in fact, the word “dock” and its various forms (e.g., docking, docked, etc) is not found in Wiggerman at all.

(2) Differences Between the Prior Art and the Claims at Issue

Claim 20 specifically recites a watercraft with a docking light fixture including a docking lamp positioned within the docking light fixture and a navigation light provided on the docking light fixture. As noted above, nothing about the wand 10 described in Wiggerman is intended for purposes of docking and the concepts involved in docking a boat are not found in Wiggerman at all. The wand 10 simply does not include a docking lamp.

(3) The Level of Ordinary Skill in the Pertinent Art

The Examiner’s position is essentially summarized in paragraph 8 of the Final office action. The Examiner presupposes and presumes that Fig. 2 of Wiggerman is a “docking light system.” One skilled in the art understands that all of the lights (e.g., 40, 30, 35, etc.) on the wand 10 shown and described in Wiggerman are running lights providing additional illumination to reduce the possibility of mistaking the stern light as a light on the shore line. There is nothing within Wiggerman to suggest to a person of ordinary skill in the art to add a docking lamp on the wand 10. The only suggestion for such combination is applicant’s disclosure and invention and is therefore improper hindsight.


CONCLUSION

Accordingly, Applicant respectfully submits that claims 11 and 12 are allowable over Aubé, and that claims 13-15 and 20 are allowable over Wiggerman. Applicant therefore requests that the Board overturn the rejections of these claims, and that these claims be allowed and the patent passed to issuance.

Respectfully submitted,

Date: May 31, 2005

By:



Gary R. Stanford
Reg. No. 35,689

Gary R. Stanford
Law Offices of Gary R Stanford
Customer Number 26122
330 W Overlook Mountain Rd
Buda, Texas 78610
512-295-8050 – work
512-233-2633 – fax

APPENDIX
APPLICATION CLAIMS INVOLVED IN THIS APPEAL

11. A docking light system for a watercraft, comprising:

first and second docking light fixtures;

first and second docking lamps positioned within the first and second docking light fixtures, respectively; and

first and second accessory lamps mounted to the first and second docking light fixtures;

wherein the first and second accessory lamps collectively are a masthead light.

12. The docking light system of claim 11, wherein the first and second docking light fixtures are mounted at a bow of the watercraft.

13. A docking light system for a watercraft, comprising:

a docking light fixture;

a docking lamp positioned within the docking light fixture; and

a navigation light provided on the docking light fixture.

14. The docking light system of claim 13, wherein the navigation light comprises a masthead light.

15. The docking light system of claim 13, wherein the navigation light comprises a stern light.

20. A watercraft, comprising:

a hull and fittings;

a docking light fixture mounted to a selective one of the hull and the fittings;

a docking lamp positioned within the docking light fixture; and

a navigation light provided on the docking light fixture.